

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

OSCAR GARNER,

Plaintiff,

ORDER

v.

11-cv-719-slc

JEFFREY JOPP,

Defendant.

On May 13, 2013, a jury returned a verdict in favor of defendant and judgment was entered dismissing this case. Now plaintiff has submitted a motion for an order directing prison officials to pay the remainder of his filing fee from his release account.

Under the Prison Litigation Reform Act, an inmate who files a lawsuit in federal court under the *informa pauperis* statute must pay the \$350 filing fee, first by making an initial partial payment and then by sending the remainder of the fee to the court in installments of 20% of the preceding month's income, in accordance with 28 U.S.C. § 1915(b)(2). On October 27, 2011, this court entered an order assessing plaintiff a \$10.00 initial partial payment of the filing fee for this case, which plaintiff paid on November 14, 2011. Plaintiff has been making monthly installment payments since then.

Although this court admires plaintiff's initiative, I cannot order the state to allocate plaintiff's release account funds in the manner he requests. The language of 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner's release account to satisfy an initial partial payment if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). However, with the exception of such initial partial payments, this court does not have the authority to tell state officials whether, and to what extent, a prisoner should be able to withdraw money from his release account. Because plaintiff cannot use his

release account funds to pay the remaining balance of the \$350 filing fee or for his expenses in pursuing his claims, I will deny his motion.

ORDER

IT IS ORDERED that plaintiff Oscar Garner's motion for an order directing prison officials to pay the remainder of his filing fee from his release account, dkt. 63, is DENIED.

Entered this 29th day of April, 2014.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge